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No. 09-93

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

WILLIAM STUART ANAPOELL, M.D.,

Petitioner,

v.

AMERICAN EXPRESS BUSINESS FINANCE CORPORATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Respondent, American Express Business Finance Corporation n/k/a Key Equipment Finance, Inc. is wholly owned by KeyBank National Association, which is wholly owned by KeyCorp., a publicly traded company.

KeyBank National Association (a national bank) is the parent of Respondent Key Equipment Finance, Inc. (KEF) and is a wholly owned subsidiary of KeyCorp (a publicly traded company). KEF identifies the following as parents, trusts, subsidiaries and/or affiliates of said party that have issued shares or debt securities to the public or own more than ten percent of the stock of the following: KeyBank National Association (parent national bank and wholly owned subsidiary of KeyCorp., a publicly traded company), Key Equipment Finance International, Inc. (a Colorado corporation), Key Government Finance, Inc. (a Colorado corporation), KSP Canada ATC, Inc. (a Delaware corporation), and First Sierre Receivables III, Inc. (a Delaware corporation).

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PRELIMINARY STATEMENT

Petitioner argues that the Supreme Court should grant his certiorari petition to review a decision on "an important question of federal law" that the Tenth Circuit Court of Appeals applied "in a way that conflicts with relevant decisions of this Court." Specifically, he contends that his case presents the "opportunity to clarify the operation of the pleading sufficiency standard announced in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)," and that this case has implications for "the rights of many thousands of small businesspeople across the nation."

Contrary to Petitioner's assertions, this case is nothing more than a private business dispute involving the construction of three unambiguous words contained in an equipment lease, the plain meaning of which, as two federal courts have now held, contradicts Petitioner's interpretation and demonstrates that Petitioner has failed to state plausible claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Dissatisfied with the holdings of those courts, Petitioner seeks yet another review, arguing that, because his pleading contains "considerable factual detail" concerning "the manners of breach," he has alleged enough to satisfy the *Twombly* pleading standard.

Petitioner's claims, however, were dismissed not because they lacked factual detail, but because they hinge on his erroneous interpretation of contractual language that he has conceded is unambiguous. Thus, because that language contradicts his assertion that the

contract was breached, his particularized allegations about "the manners of breach" fail to render his claims plausible. More importantly, and apart from the merits of Petitioners arguments, the Petition does not in fact assert a conflict among the federal circuit courts, and the important question of federal law that the Petition seeks to raise — the federal pleading standards — is well established and has already been comprehensively addressed in recent opinions of this Court.

STATEMENT OF THE CASE

At issue in this case is one provision of an equipment lease (the "Lease") (Appendix "App." 39-48) between Petitioner as lessee and Respondent American Express Business Finance Corporation ("AEBF") as lessor[1] which obligates Petitioner to maintain liability, fire, damage, casualty and theft insurance on the leased equipment (the "Insurance Provision"). The key language appears in a sentence of the Insurance Provision that states that "[i]n the event that Lessor determines that any such insurance is not in effect, Lessor may (but shall not be required to) obtain such insurance *at Lessee's expense.*" (*Id.*, 42, ¶8) (Emphasis added)

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[1] Subsequent to Petitioner entering into the Lease with AEBF, Respondent Key Equipment Finance, Inc. ("KEF") acquired AEBF's equipment leasing portfolio and assumed status as lessor under the Lease. For ease of reference, and because the distinction between AEBF and KEF is not relevant to any issues now before this Court, this brief herein refers to both Respondents interchangeably as "AEBF" or "Respondents."

Petitioner, who elected to have AEBF obtain the necessary insurance on his behalf, asserts, in his Second Amended Complaint (the "Complaint") (App. 28-38), that the "plain language" of the words "at Lessee's expense" imposed a duty upon AEBF "to ascertain their expense for obtaining insurance" and limited AEBF to charging Petitioner no more than such expense. (*Id.*, 35, ¶ 32) He claims that AEBF breached the Lease and charged him on a monthly basis amounts that were "far in excess of and unrelated to their expense of obtaining insurance," (*id.*, 36, ¶33) including a

> "'billing and collecting' fee (with no corresponding cost to Defendants) and/or undisclosed interest at grossly excessive rates for Defendants' 'financing' of the premium (with rates well over the cost of any actual funds advanced); and/or . . . because Defendants (or their alter ego affiliates) receive payments from insurance agents or insurance companies under the guise of reinsurance cessations, service fees, commissions or rebates with no corresponding costs or risk."

(*Id.*, 31, ¶16) Based on the same allegations, Petitioner also asserts a claim for breach of the implied covenant of good faith and fair dealing. (*Id.*, 36, ¶¶36-41)

Petitioner further asserted that, "[i]n the alternative, Defendants breached the Agreement by failing to ascertain their expense for obtaining insurance

by charging Plaintiff and class members some random amount" (App., 36, ¶34) and that

> "[t]he charges . . . are so disproportionate with the true expense of obtaining insurance that the purpose of the charge could not have been related to insurance as mandated by the contract's terms, but instead is a disguised profit center allowing Defendants to secretly charge more for leasing the equipment to Plaintiffs than Plaintiffs agreed to pay."

(*Id.*, 37, ¶39)

AEBF filed a motion to dismiss the Complaint pursuant Fed. R. Civ. P. 12(b)(6). By Order dated May 28, 2008 (the "District Court Decision") (App. 11-25), the United States District Court for the District of Utah granted AEBF's motion, dismissing both of Petitioner's claims with prejudice. Recognizing that contract interpretation is a question of law, the District Court first examined the four corners of the agreement to determine the parties' intentions from the plain meaning of the contractual language. (*Id.*, 17-18) The court found the contractual provision in question to be unambiguous[2] and determined that it "does not limit or proscribe the imposition of any billing fees, collection fees, commissions or other charges related to procuring the insurance at issue." (*Id.*, 18) It noted that Petitioner

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[2] Notably, there has never been any dispute concerning the lack of ambiguity in the relevant terms of the Lease. Indeed, Petitioner has consistently argued that his interpretation is based solely on the plain language of the contract. (*See* Petition, 18).

"cannot and does not point to any express term in the Agreement to support his interpretation" that the words "Lessee's Expense" means "Lessor's Actual Cost And No More." (*Id.*) Nor did the court find any support in the Lease's terms for Petitioner's assertion of a "duty on the part of the [Respondents] to ascertain the expense to Plaintiff's benefit." (*Id.*, 21) Thus, the District Court concluded that Petitioner was attempting to insert "language into the Agreement that does not exist." (*Id.*, 18)

The District Court also recognized the parties' agreement that the Lease did limit the Respondents to only charging Petitioner "for costs that have a nexus to the insurance coverage." (App. 18) The court found that the particular charges Petitioner alleged were improper — billing and collection fees, and interest on money advanced by AEBF for premiums — were clearly related to obtaining Petitioner's insurance coverage, and concluded that Petitioner's allegation of a "disguised profit center" was unsupported and conclusory. (*Id.*, 20) The District Court accordingly concluded that Petitioner "alleges breach of a promise that was never made and fails to meet his pleading burden concerning a promise that was made." (*Id.*, 21)

As for the claim for breach of implied covenant of good faith and fair dealing, the District Court found that Petitioner's allegations ran contrary to well-established law that one may not use an implied covenant to create new, independent rights or duties to which the parties did not agree, create rights or duties inconsistent with express contractual terms, or compel a contractual party to benefit the other party to its own detriment.

(App. 23) In short, the District Court concluded that Petitioner "improperly seeks to rewrite the Insurance Provision and prevent the Defendants from exercising their right under the Agreement to charge fees and associated expenses incurred in obtaining the insurance that Plaintiff elected not to procure." (*Id.*)

By Order dated March 24, 2009 (the "Tenth Circuit Decision") (App. 1-10), the Tenth Circuit affirmed the District Court Decision for "substantially the reasons" set forth therein. (*Id.*, 9)

REASONS FOR DENYING THE PETITION

I. The Petition Falls Well Below This Court's Standard For Certiorari Review.

Supreme Court Rule 10, which sets forth the considerations governing review of a petition for certiorari, provides that certiorari is only granted for "compelling reasons." Rule 10 then provides a non-exhaustive, though ordinarily controlling, list of factors that the Court considers in reviewing petitions for certiorari. With respect to a decision of a United States court of appeals, the Court will consider granting a petition where the appeals court has (i) "entered a decision in conflict with the decision of another United States court of appeals on the same important matter," (ii) "decided an important federal question in a way that conflicts with a decision by a state court of last resort;" or (iii) "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Sup. Ct. R. 10(a).

The second and third factors are plainly inapplicable here. Petitioner does not contend that the Tenth Circuit Decision conflicts with a decision by a state court of last resort. Nor does Petitioner argue that this is one of those extraordinarily rare cases where the lower court decision is so out of line with the customary course of judicial proceedings that this Court is compelled to invoke its supervisory power to intervene. Rather, Petitioner's assertion that Supreme Court review is appropriate here because "a United States court of appeals has decided an important question of federal law in a way that conflicts with relevant decisions of this Court," (Petition, 8) appears to be an attempt to shoehorn this case into the first category regarding conflicts amongst the federal circuit courts. Nevertheless, even if the Court accepts that the Petition properly fits that category, it is clear that this case cannot satisfy the Rule 10 standard for certiorari review.

Petitioner's central argument is that his Petition "presents the Court with an opportunity to clarify" the "considerable confusion" concerning application of the Supreme Court's holding in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) that a pleading, to state a claim for relief, "must alleged [sic] sufficient factual matter to render the claim plausible on its face." (Petition at 1, 8) He contends that the Tenth Circuit Decision held him to an "erroneously heightened standard of pleading specificity" (*id.* at 9) that is

> "much more stringent than contemplated by this Court in *Twombly* or in subsequent Supreme Court opinions on the subject." (*Id.* at 8) He asserts that, although he "stated

> his claims for breach of contract and breach of the implied covenant of good faith and fair dealing with considerable factual detail going beyond that required by law, . . . the Tenth Circuit affirmed dismissal of his claims for want of even more."

(*Id.* at 10) Notably, Petitioner's claim is not that the Tenth Circuit applied the wrong standard of review. Rather, his argument is simply that the Tenth Circuit misapplied the *Twombly* standard to the facts of his complaint. As described in more detail in the arguments that follow, *see infra* Part B., the District Court and Tenth Circuit Decisions are perfectly in accordance with *Twombly* and with *Ashcroft v. Iqbal*, __ U.S. __, 129 S. Ct. 1937 (2009), the other recent Supreme Court decision to analyze federal pleading requirements in extensive detail.

More importantly, even assuming, *arguendo*, that there is any validity to Petitioner's arguments, his Petition fails as a threshold matter because it does not come close to satisfying the Rule 10 standard. A catch-all provision at the bottom of Rule 10 cautions that a "petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or *the misapplication of a properly stated rule of law.*" Sup. Ct. R. 10 (emphasis added). *See also* Stephen M. Shapiro, *Certiorari Practice: The Supreme Court's Shrinking Docket* (2007), http://www.appellate.net/articles/certpractice.asp (last visited August 20, 2009) ("In other words, where the applicable rule of law is settled, the Court will not supervise its application to particular facts and circumstances even if the application

is arguably wrong."). The Petition here runs directly afoul of this warning. The federal pleading standards are well established, and, as Petitioner acknowledges, this Court has already provided significant guidance on those standards in recent opinions. Very little civic benefit would be accomplished by yet another such examination by this Court.

II. Petitioner's Claims Were Appropriately Dismissed Because They Are Not Plausible As A Matter of Law.

Contrary to Petitioner's argument, the conclusions of the District Court and Tenth Circuit that Petitioner fails to state a claim were based not on a lack of particulars, but on the legal conclusion that, because the plain language of the contract at issue contradicts Petitioner's interpretation, his claims, on their face, are not "plausible."

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." As the Supreme Court held in *Twombly*, although Rule 8(a)(2) does not require "[d]etailed factual allegations," 550 U.S. at 555, the pleader must set forth sufficient factual matter which, accepted as true, "state a claim that is plausible on its face." *Id.* at 570. A claim has facial plausibility when the well-pleaded factual allegations of the complaint allow the court to draw the reasonable inference, based on its "experience and common sense," *Ashcroft*, 129 S. Ct. at 1950, that the defendant is liable under the claim alleged. *Twombly*, 550 U.S. at 556. Where the well-

pleaded facts do not permit such an inference, the complaint does not show "that the pleader is entitled to relief." Under such circumstances, as *Twombly* and *Ashcroft* hold, dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure is appropriate.

In *Twombly*, the Supreme Court considered the sufficiency of a complaint alleging that incumbent telecommunications providers had entered into an agreement not to compete and to forestall competitive entry by upstart competitive local exchange carriers in violation of section 1 of the Sherman Act. 550 U.S. at 550. The plaintiffs asserted that the defendants "ha[d] entered into a contract, combination or conspiracy to prevent competitive entry . . . and ha[d] agreed not to compete with one another," and alleged, as their factual basis, that the defendants' "parallel course of conduct . . . to prevent competition" and inflate prices was indicative of the unlawful agreement alleged. *Id.* at 551. Analyzing whether the well-pleaded, nonconclusory factual allegation of "parallel" behavior gave rise to a "plausible suggestion of conspiracy," the Court noted that, although "parallel conduct" was consistent with an unlawful agreement, it was not only compatible with, but indeed was more likely explained by, lawful and independent free-market behavior. 550 U.S. at 567. Further, the Court observed, the law was clear that "'mere independent parallelism does not establish the contract, combination, or conspiracy required by Sherman Act §1.'" *Id.* at 554 (citation omitted). Thus, the allegation of "parallel conduct," even if accepted as true, did not plausibly suggest an illicit accord and was therefore facially insufficient to set forth a claim in

accordance with Rule 8(a)(2). *Id.* at 567. Accordingly, the Court dismissed the complaint pursuant to Rule 12(b)(6).

Similarly, in *Ashcroft*, the Supreme Court dismissed a *Bivens* action brought by a Pakistani Muslim who claimed that, after he had been arrested on criminal charges following the September 11, 2001 terrorist attacks, he was detained by federal officials under harsh and restrictive conditions solely on account of his race, religion or national origin. 129 S. Ct. at 1951. The Court, noting that *Bivens* requires a plaintiff "to plead and prove that the defendant acted with discriminatory purpose," *id.* at 1948, examined the plaintiff's allegations in accordance with *Twombly*. The Court concluded that the plaintiff's well-pleaded factual allegations, taken as true, failed plausibly to establish discriminatory purpose because they suggested "obvious alternative" explanations, including a nondiscriminatory intent to detain aliens who were illegally present in the United States and had potential connections to those who had perpetrated the terrorist attacks, *id.* at 1951, and to keep suspected terrorists in the most secure conditions available until they could be cleared of suspicion. *Id.* at 1952.

The District Court and Tenth Circuit Decisions involve a straightforward application of Rule 8(a)(2) in accordance with the analyses set forth in *Twombly* and *Ashcroft*. Petitioner, in support of his claim that AEBF breached the Lease and its implied covenant of good faith and fair dealing, points to the "plain and unambiguous" language of the Insurance Provision, specifically the sentence "In the event that Lessor

determines that any such insurance is not in effect, Lessor may (but shall not be required to) obtain such insurance at *Lessee's expense.*" (App. 42, ¶8) (Emphasis added). Based solely on that language, Petitioner asserts that AEBF had a duty to "ascertain" the expense of obtaining insurance on his behalf and to charge him no more than the ascertained expense. (App. 32, ¶17) He alleges that AEBF, in violation of the Lease, overcharged him by imposing a "billing and collecting fee" and/or undisclosed interest at grossly excessive rates. (*Id.*, 31, ¶16) He further asserts that AEBF took such actions to "receive payments from insurance agents or insurance companies under the guise of reinsurance cessations, service fees, commissions, rebates with no corresponding costs or risk." (*Id.*)

Taking as true Petitioner's well-pleaded factual allegations, the District Court and the Tenth Circuit found that the unambiguous Lease language contradicts Petitioner's claims in that it "does not limit or proscribe the imposition of any billing fees, collection fees, commissions or charges related to procuring the insurance at issue." (*Id.*, 18) As the District Court noted, Petitioner "cannot and does not point to any express term in the Agreement to support his interpretation" that the words "Lessee's Expense" means "Lessor's Actual Cost And No More." (*Id.*) Nor, the District Court found, did the language "set forth any duty on the part of the Defendants to ascertain the expense to Plaintiff's benefit." (*Id.*, 21) Thus, as the District Court concluded, Petitioner "is reading language into the Agreement that does not exist" (*id.*, 18), and "alleges breach of a promise that was never made and fails to meet his pleading burden concerning a promise that was made." (*Id.*, 21)

Under the circumstances, the District Court and the Tenth Circuit dismissed Petitioner's claims under Rule 12(b)(6). Like the *Twombly* and *Ashcroft* plaintiffs, Petitioner failed to "state a claim for relief that is plausible on its face." Just as the Court found in *Twombly* and *Ashcroft* that no liability could, in view of alternative explanations, be plausibly inferred from the plaintiffs' factual allegations, so too did the District Court and Tenth Circuit conclude that no breach of contract or implied covenant of good faith and fair dealing could, in light of plain contractual language, be inferred from Petitioner's factual assertions. The Petition, therefore, fails to show that there is any "important question of federal law" that a United States court of appeals has decided "in a way that conflicts with relevant decisions of this Court." (*Id.* at 8).[3]

The District Court and the Tenth Circuit Decisions are also consistent with well-established case law holding that dismissal of breach of contract claims under Rule 12(b)(6) is "both justified and appropriate" where the contract, attached to the complaint or incorporated therein by reference, unambiguously demonstrates that the relief sought is not merited. *See, e.g., Palda v. Gen. Dynamics Corp.*, 47 F.3d 872 (7th Cir. 1995) (dismissing complaint alleging breach of employment and stock option agreements where plaintiff failed to exercise options within three months, as unambiguously required by the agreements, because he had been terminated before the options became exercisable); *Case v. State*

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[3] Nor does the Petition raise issues that would "affect the rights of many thousands of small businesspeople across the nation." (Petition at 21)

Farm Mut. Auto. Ins. Co., 294 F.2d 676 (5th Cir. 1961) (dismissing complaint alleging wrongful termination of agency agreements which explicitly gave defendants right to terminate plaintiff without cause).

Petitioner's argument that the District Court and Tenth Circuit "set an extraordinary standard and erroneously heightened the standard of pleading specificity" (Petition at 5) misses the point. The District Court and the Tenth Circuit found Petitioner's claims insufficient not for lack of detailed allegations concerning the alleged "breach," but because the plain language of the Lease unambiguously demonstrates that Petitioner's interpretation of the words "Lessee's expense" — which underlies his claims and all the "particulars" he alleges — is erroneous. Insofar as the very *premise* of Petitioner's claims — that the Lease limits AEBF to charging only its actual expense — is contradicted by the Lease's plain language, no amount of factual particulars can salvage his claims. As the Court noted in *Twombly*, "our concern is not that the allegations in the complaint were insufficiently 'particular[ized],' . . . rather, the complaint warranted dismissal because it failed *in toto* to render plaintiffs' entitlement to relief plausible." 550 U.S. at 569. Thus, Petitioner could no more satisfy Rule 8(a)(2) by embellishing his flawed claims with "considerable factual detail" than the *Twombly* plaintiffs could have saved their pleading with additional factual allegations concerning the defendants' independent acts of "parallel conduct." In short, Petitioner is unable to satisfy the

threshold requirement that there be a claim for relief that is "plausible on its face."[4]

Petitioner's claims, moreover, are undercut by his acknowledgement that "the plain language of the Agreement allows the Defendants to charge for costs that have a nexus to the insurance coverage" (App. 18)[5] and by the fact that the particular charges identified in the Complaint — billing and collection fees and interest on monies advanced for premium payments on Petitioner's behalf — clearly do relate to the cost of obtaining insurance. (*Id.*, 19) Thus, Petitioner's

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[4] Petitioner also cites *Erickson v. Pardus*, 551 U.S. 89 (2007), in which, he asserts, the Court "had occasion to correct an overly harsh application of *Twombly* by the Tenth Circuit." (Petition at 10) In *Erickson*, however, the plaintiff alleged a plausible claim, *i.e.*, that his Eighth Amendment rights were violated because prison officials refused to give him his medication and that the withholding of the medication was life-threatening. The lower courts, notwithstanding their acknowledgement that "courts have found Eighth Amendment violations when delays in medical treatment have involved 'life-threatening situations . . . ," 551 U.S. at 93, had dismissed the plaintiff's complaint for failure to state a claim. In the present case, by contrast, Petitioner, like the *Twombly* and *Ashcroft* plaintiffs, has failed to state a plausible claim. Moreover, the *Erickson* plaintiff, the Court noted, was pro se and, therefore, his complaint needed to be held to "less stringent standards than formal pleadings drafted by lawyers." *Id.* at 94.

[5] In the Complaint, for example, Petitioner alleges that AEBF breached the lease by charging him "an amount far in excess of and *unrelated to their expense in obtaining insurance*" (App. 36, ¶33) (emphasis added) and that the purpose of the charges "could not have been *related to insurance as mandated by the contract's terms.*" (*Id.*, ¶39) (Emphasis added).

allegations are contradictory and fail to set forth any charge by AEBF that is not permitted under the terms of the Lease.[6] Petitioner's assertion that the charges were "unrelated to the expense of obtaining insurance" (*Id.*, 36; ¶33), wholly unsupported by the factual particulars he provides, is, as the District Court found, merely conclusory. (*Id.*, 20)

Finally, Petitioner contends that the District Court and Tenth Circuit erroneously interpreted the "plain meaning" of the words "at Lessee's expense" in the Insurance Provision. (Petition at 17-20) He makes no effort to explain why this issue, which involves the construction of three words in a private equipment leasing agreement, warrants Supreme Court review. Petitioner's argument is that the "ordinary, plain meaning" of the word "expense" in the phrase "at Lessee's expense" is "cost or charge" or "financial burden or outlay." (Petition at 18) On the basis of those dictionary definitions, he contends that the contractual language "unambiguous[ly]" means that AEBF, the Lessor, can charge Petitioner, the Lessee, only its actual "expense." Those definitions, however, fail to support Petitioner in any way. The Insurance Provision nowhere states that Petitioner is to be charged "*Lessor*'s expense" of obtaining insurance. It states, rather, that if Lessor obtains the insurance, it will be "*at* Lessee's expense." The difference is a material one: "at Lessee's

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[6] Petitioner's attempt in the Petition to distance himself from his earlier acknowledgement by arguing that "costs [with] a nexus to insurance coverage" means those that were "actually incurred" in obtaining coverage (Petition at 19), is a wholly unconvincing piece of circular reasoning.

expense" means only that Petitioner assumes, without further specification, a "cost or charge" or "financial burden or outlay." It does *not* define or qualify the amount of the expense that may be passed on to the lessee, beyond the limitation that the charge have a nexus to the provision of insurance coverage. That the Lease does not contain such qualifying language establishes that the parties did not "bargain for" such a limitation. Thus, the lower courts were correct to reject Petitioner's request to rewrite the contract to add terms for his benefit. This Court should similarly reject Petitioner's request for a judicial rewrite of his contract.

Where, as here, the allegations in the complaint do not raise a plausible claim of entitlement to relief, the lower courts correctly dismissed the case "at the point of minimum expenditure of time and money by the parties and the court.'" *Twombly*, 550 U.S. at 558 (citations omitted).

CONCLUSION

Petitioner fails to demonstrate why extraordinary review of his case by the United States Supreme Court is warranted. This is not a case, as Petitioner asserts, involving "an important question of federal law." Nor did the District Court and Tenth Circuit, as Petitioner argues, render decisions in conflict with Supreme Court precedent. This case presents no "opportunity" to "clarify" the federal pleading standard and it has no broad-ranging implications for "businesspeople across the nation." It involves nothing more than a private business dispute over the

construction of three words in an indisputably unambiguous equipment leasing contract. Accordingly, Respondents respectfully request that the Petition be denied.

Respectfully submitted,

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